

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: Theis Finlev, Executive Fellow
Scott Tocher, Senior Commission Counsel
Luisa Menchaca, General Counsel

Date: April 5, 2005

Subject: Pre-notice of adoption of Regulation 18571 – Payment to the General Fund of Laundered Contributions

I. Executive Summary

“Laundered” contributions are prohibited under the Political Reform Act (“Act”).¹ Any candidate or committee that receives a contribution, directly or indirectly, from any person in a name other than the name by which such person is identified for legal purposes, shall pay to the General Fund the amount of the contribution. (Section 85701.) The Enforcement Division has requested a regulation to clarify a process and time line for complying with this statute.

Staff proposes a regulation that would:

1. Clarify that the committee must pay the full amount of the contribution, without regard as to whether the committee knew the contribution was laundered at the time it was received, and without regard as to whether the contribution had already been spent at the time the committee became aware the contribution was “laundered.”
2. Explain what triggers the duty to pay, and when the payment must be paid once the duty is triggered.

II. Background

According to the Enforcement Division, some committees misunderstand section 85701, which provides that “[a]ny candidate or committee that receives a contribution in violation of Section 84301 shall pay to the General Fund of the state the amount of the contribution.”

¹ Government Code sections 81000-91014.

Some committees have argued that the statute requires the return of only that portion of the contribution which remains once the committee becomes aware that the contribution was laundered; or requires disgorgement only if the committee was aware that the contribution was laundered at the time it was received. However, the statute, by its plain meaning, states that committees shall pay the “amount of the contribution” that was received in violation of section 84301. The statute does not provide for partial payments.

This regulation is intended to answer such questions; and to better enable the Commission to bring enforcement actions against committees that violate section 85701.

III. Proposed Regulatory Action

Commission staff proposes adopting regulation 18571 as follows:

A candidate or committee that receives a contribution made in violation of Government Code section 84301 has a duty to pay to the General Fund of the state the amount of the contribution when the candidate or committee has actual knowledge that the candidate or committee received a contribution in violation of Government Code section 84301, or is notified by the Commission, civil prosecutor or a local ethics agency that a final determination was made that the candidate or committee received a contribution made in violation of Government Code section 84301. The payment to the General Fund must be made within 60 days of such knowledge or notification.

How the Adoption Addresses the Problem

This regulation explains how and when the duty to disgorge “laundered” contributions is triggered. The regulation declares that the disgorgement duty is triggered when a committee knows that a contribution is laundered, or when the FPPC or a local ethics agency communicates such a determination to the committee.

IV. Recommendations

Staff recommends that the Commission approve the proposed adoption of regulation 18571 for notice for adoption at the July Commission meeting.

Attachment: Proposed Regulation 18571